ORIGIN AND DEVELOPMENT OF ADVOCACY AS A PROFESSION.

ADVOCACY is one of the most ancient and honorable of all callings. From time immemorial the principle that a person has the right to select another to plead his cause has been recognized. Many of the great orators of Greece and Rome, though in a manner differing from that of modern times, performed the functions of advocates, and many of their most famous orations were composed for that purpose. The influence of the advocate in the administration of justice was scarcely less potent in ancient times than it is at present.

Among the ancient Greeks, it was not customary for the advocate actually to plead the cause of his client in court. The usual custom was for the client to lay his case before one of the great orators or writers of the day who would then prepare an oration which the client read or delivered at the trial. Referring to this ancient practice, Judge Sharswood says:

> "In all countries advanced in civilization, and where laws and manners have attained any degree of refinement, there has arisen an order of advocates devoted to prosecuting or defending the lawsuits of others. Before the tribunals of Athens, although the party pleaded his own cause, it was usual to have the oration prepared by one of an order of men devoted to this business, and to compensate him liberally for his skill and learning. Many of the orations of Isocrates, which have been handed down to us, are but private pleadings of this character. He is said to have received one fee of twenty talents, about eighteen thousand dollars of our money, for a speech that he wrote for Nicocles, King of Cyprus. Still, from all that appears, the compensation thus received was honorary or gratuitous merely." [1]

Among the Romans advocacy received even a wider recognition than among the ancient Greeks. During the period of the Republic, it was the prerogative of the Roman patrician to render assistance, and afford protection, to his dependents and even

[1] SHARSWOOD, PROFESSIONAL ETHICS, p. 137.

to others who sought his services and advice. For this purpose, therefore the patrician frequently appeared in the courts to defend the cause of his client. In this way there gradually developed the highest type of Roman advocate—the *patronus causarum,* or patron, or, in modern parlance, the barrister. At this time the patron charged no fee for his services, although it was not considered improper for him to accept an *honorarium* or gratuity from the client. Referring to advocacy during this period, Mr. Alexander H. Robbins, in his excellent treatise on American Advocacy, gives the following interesting account:

> "The patron was held in very high esteem, but the professional *advocatus* was considered at that time as an abomination. Statutes were passed, prominent among which was the Cincian Law, which prohibited the advocate to charge or receive any fee for his services.
>
> "Later, in the era of the Roman Empire, the Cincian Law was ignored and the professional *advocatus* received public recognition and his qualifications, duties and manner of compensating him for his services, were regulated by statute. Professional advocacy then rose to an honorable calling and gradually supplanted the ancient and more distinctly honorable relation of patron and client. Into all countries, therefore, where the civil law has gone, the *advocatus* has followed, and he is still called by that name or some derivative therefrom." [2]

In this connection the jurisconsult, or "confidential legal advisor of the Roman people", may also be mentioned. The jurisconsult was presumed to be thoroughly versed in the law of the land, and he frequently appeared in the Forum for the purpose of imparting information and advice. Being an expert in the science of the law, his opinion was highly valued, not only by private persons as his clients, but also by the magistrates, advocates, and others employed in administering justice. Referring to the important position occupied by the jurisconsult, it is said in Gibbon's Decline and Fall of the Roman Empire: [3]

> "On the public days of market or assembly, the masters of the art were seen walking in the Forum, ready to impart the needful advice to the meanest of their fellow citizens,

[2] ROBBINS, AMERICAN ADVOCACY, p. 3.

[3] Vol. IV, p. 320.

> from whose votes on a future occasion they might solicit a grateful return. As their years and honors increased they seated themselves at home, on a chair or throne, to expect with patient gravity the visits of their clients, who at the dawn of day, from the town and country, began to thunder at their doors."

It will be observed, from what has been said above, that the early Roman lawyers appear to have been divided into two general classes—the *patroni causarum* who corresponded somewhat to the modern barrister, and the *juris consulti,* or counsellors, whose chief function was to interpret the law and to advise.[4] Although it nowhere appears, so far as the writer has been able to ascertain, that the term *advocatus* was originally applied to the patron or to the jurisconsult, yet there would seem to be no doubt that the forensic orators and jurisconsults of the latter period of the Roman Republic, who followed the law as a profession and received *honoraria* for their services, occupied a position closely analogous to the advocate of the present day, and thus it has been said that "the profession is older than the name." [5]

There appears also to have been no distinct line of demarcation between the two branches of the profession, such as now exists between barristers and solicitors in England. The functions of the orator and jurisconsult might be exercised separately or might be united in the same person. Thus Cicero speaks of his preceptor, Scaevola, one of the most eminent of Roman advocates, as "the most eloquent of the learned and the most learned of the eloquent".[6]

It may be said in general of the early Roman lawyers that they were in no wise inferior to their modern successors in the profession. They were learned in the law, powerful in oratory and debate, zealous in upholding the law of the land, devoted to the interests of their clients, and true to the finest ethics of their profession. Among them are to be found such illustrious personages as Scaevola, Marcus Antonius, grandfather of Mark Antony, Hortensius, Marcellus, Appius Claudius and his son

[4] For an interesting account of lawyers of ancient Rome, see Central Law Journal, Vol. 92, article by Edward J. White.

[5] LIBRARY OF UNIVERSAL KNOWLEDGE, Vol. I, p. 114.

[6] DE ORATORE, 1.39.180.

Sabinius, Cato the elder, and Cato the younger, Scipio, Lucius Licinius Crassus, Cotta, Marcus Licinius Crassus, and Cicero. It is interesting to note in this connection that Julius Cæsar was not only a soldier, but was also a learned lawyer and an orator of distinction. In his argument before Cæsar, in defense of Ligarius, Cicero makes reference to the fact that "I have pleaded many causes, Cæsar, and some even with you as my coadjutor, while you paved the way to your future honors by practice in the Forum".[7] It is stated by Tacitus, also, that "Cæsar, the Dictator, was on a par with the greatest orators".[8]

But

> "Marcus Tullius Cicero was, by far, the greatest legal luminary of the Republic, and the magnitude of his labors as orator, advocate, consul, author, teacher, philosopher, and commutator, was so prodigious that he stands without a rival, and, in spite of his vacillations and conceits, even after two thousand years the profession must bow in awe and reverence to this great name, which heads the list of Roman lawyers, the most eloquent of the sons of Romulus!
>
> "* * * It is true now, as in the days of Lord Coke, that 'out of the old fields cometh the new corn'. Like ourselves, these ancient lawyers of Rome were but shadows, moving swiftly in the sun, and yet such men as Cicero, Cato and Brutus gave to those shadows a certain reality of setting the example of associating with the law and letters an eloquence and nobility and uprightness of purpose, which has made through the centuries for the straightforwardness, purity and elevation of humanity." [9]

Turning to a consideration of the rise of advocacy in England, not a great deal can be said of the ancient origin of the profession in that country, for much of it is hazed in uncertainty. "Very early in the history of England, justice was crudely and arbitrarily administered. The village moots, the shire courts and, in feudal times, the barons' courts, administered justice without much formality. A lawyer was not a necessity." [10]

---

[7] PRO LIGARIO, 10.30.
[8] ANN., 13.3.10.
[9] Edward J. White, in Central Law Journal, Vol. 92, p. 416.
[10] ROBBINS, AMERICAN ADVOCACY, p. 4.

But even in this early period, we find the principle of advocacy recognized, at least in civil causes.[11]

> "In the very old days a litigant is allowed to bring his friends into court, and to take 'counsel' with them before he speaks. * * * Then sometimes one of my friends will be allowed, not merely to prompt me, but even to speak for me." [12]

It seems that the duties of advocate were at first performed by the priests or monks, which may be accounted for by reason of the fact that their educational advantages were superior to those of any other class of persons.[13] Later, "these legists and decretists constituted a professional class: they held themselves out as willing to plead the causes of those who would pay their fees. They did a large business, for the clergy of the time were extremely litigious. * * * And what we might call an ecclesiastical 'Bar' had been formed." [14]

We are told by Blackstone, in referring to this period, that a great deal of dissatisfaction existed because of the clergy's close adherence to the principles of the civil law. "The nation", he says, "seems to have been divided into two parties, the bishops and the clergy, many of them foreigners, who applied themselves wholly to the study of the civil and canon laws, which now

---

[11] It was an early rule of the common law that persons accused of crime, especially capital offenses, must answer without "counsel". This defect in the English law was not completely remedied until 1836. In that year it was provided by statute that persons charged with the commission of crime should be allowed to employ counsel to make their defense, and thus prisoners were placed on an equal footing with the prosecution.

MAITLAND AND MONTAGUE, SKETCH OF ENGLISH LEGAL HISTORY, pp. 95, 176.

[12] MAITLAND AND MONTAGUE, SKETCH OF ENGLISH LEGAL HISTORY, p. 95. "It would seem that under the Saxon Kings, and certainly for some time under the Norman rule, every litigant spoke for himself, or, in some cases, if laboring under a disability, by his representative."

WARVELLE, ESSAYS IN LEGAL ETHICS, p. 27.

[13] "The laity, as a rule, were unlettered, and, because of their military habits, unwilling to apply themselves to the study of law. As a consequence its cultivation was almost wholly confined to the clergy and chiefly to the monks."

WARVELLE, ESSAYS IN LEGAL ETHICS, p. 27.

[14] MAITLAND AND MONTAGUE, SKETCH OF ENGLISH LEGAL HISTORY, p. 92.

became inseparably interwoven with each other, and the nobility and the laity, who adhered with equal pertinacity to the old common law; both of them reciprocally jealous of what they were unacquainted with, and neither of them, perhaps, allowing the opposite system that real merit which is abundantly to be found in each." [15]

Whatever may have been the situation at the time referred to by Blackstone, certain it is that, at a comparatively early date, laymen began to train themselves for performing the duties of advocates, and later, advocacy as a profession was limited to those especially trained for the purpose.[16]

About the beginning of the fourteenth century certain law societies or associations, which afterward came to be known as Inns of Court, were organized, these Inns of Court being given the exclusive power to extend a "call" to the bar and to prescribe the qualifications of the advocate. The Inns of Court, or, as they are usually termed, the Common Law Inns, are four in number: Lincoln's Inn, the Middle Temple, the Inner Temple, and Gray's Inn, and their organization marks the beginning of the real history of the legal profession in England.

Just in what manner and by what process the Inns of Court, declared by Ben Jonson to be "the noblest nurseries of liberty and humanity in the Kingdom", came to be formed, cannot be stated with any degree of accuracy, though various explanations have been given. Mr. Charles Warren says:

> "As gradually from the time of King John to Edward I, the courts became localized at Westminster Hall in London, the lawyers gathered in that city from all parts of the Kingdom, and formed a kind of University of their own in certain buildings called 'Inns' where instruction was given in the principles of English Common Law and Statute Law exclusively. Gradually 'Inns of Court' came to signify the

---

[15] BLACKSTONE'S COMMENTARIES, p. 23.

[16] "The early English lawyers, in the main, seem to have been ecclesiastics, but about the year 1207, priests, and persons in holy orders generally, were forbidden to act as advocates in the secular courts, and from thenceforward we find the profession composed entirely of a specially trained class of laymen."

WARVELLE, ESSAYS IN LEGAL ETHICS, p. 27.

four Honorable Societies of Lincoln's Inn, Gray's Inn, the Inner Temple, and the Middle Temple." [17]

"The exact origin of these Inns of Court is unknown, but they probably existed in their present form in the reign of Edward III in 1327. Henry III had taken them under his special protection, and in 1235 prohibited the study of law in any other place in London than the Inns of Court." [18]

Mr. Thomas Leaming, in "A Philadelphia Lawyer in the London Courts", gives the following interesting explanation:

"The Inns of Court began their [real] existence about 1400, nearly contemporaneously with the Trade Guilds, and both, doubtless, took their rise from the instinct of men engaged in a common occupation to combine for mutual protection. All lawyers were once men in holy orders and the judges were bishops, abbots, and other church dignitaries, but in the thirteenth century the clergy were forbidden to act in the courts, and thereupon the students of the law gathered together and formed the Inns. Much concerning their origin is obscure, but the nucleus of each was doubtless the gravitation of scholars in some ancient hostelry, there to profit by the teachings of a master lawyer of the day—just as the modern London Club has its beginning in the convivialities of a casual coffee house. In time these loose aggregations developed into strong and elaborate organizations which acquired extensive real property, now of enormous value, and have long wielded a powerful influence.

"* * * Names great in the law, in literature, in statecraft and in war are linked with each of these venerable establishments, to record which would mean to review much of the history of England as well as of America." [19]

In addition to the Common Law Inns, there were formerly

[17] "The term 'Inn' or 'Inne' was the Saxon equivalent for the French 'hostel', signifying not a public place of entertainment, but the private city or town mansion of a person of rank or wealth; thus 'Lincoln's Inn' was the hostel of the Earl of Lincoln and leased to lawyers and students of law, and the Inner and Middle Temple were the home of the Knights Templar."

WARREN, HISTORY OF THE AMERICAN BAR, p. 27.

Gray's Inn probably derived its name from the Greys of Wilton, the former owners of its present site.

[18] WARREN, HISTORY OF THE AMERICAN BAR, p. 28.

[19] For other accounts of the Inns of Court, see Introduction to BLACKSTONE'S COMMENTARIES; HOLLINGSWORTH, HISTORY OF ENGLISH LAW, Vol. II, p. 405, *et seq.*, and REEVE, HISTORY OF THE ENGLISH LAW.

ten Chancery Inns, which seem to have been organized as preparatory schools for young students or apprentices of the Inns of Court. The Chancery Inns, however, gradually fell into disuse, and disappeared altogether about the middle of the eighteenth century.[20]

The Inns of Court are the great English law schools, and through one of them every English advocate must pass. After the prospective barrister has completed his legal education, covering a course of three years, and has successfully passed his final tests under the supervision of the "benchers" of the Inns of Court, he then receives his "call" to the bar.[21]

Somewhat strangely, to the American lawyer, the legal profession in England has two divisions: the barristers or advocates proper, and the solicitors (formerly termed Solicitors in Chancery) or what might be designated, for lack of a better term, as the business or office lawyers. Both branches of the profession are of ancient origin, but sprang from different sources, and the line of demarcation between them has remained sharply drawn to the present time.

As already indicated, the early English lawyers were ecclesiastics, and there appear to have been two classes among them analogous to the present day barristers and solicitors.

> "The tribunals of the Church knew both the 'advocate' (who pleads on behalf of a client) and the 'procurator' or 'proctor' (who represents his client's person and attends to his cause).
>
> "In course of time, two groups similar to these grew up round

[20] The several Chancery Inns, as preparatory schools, seem to have been attached to some one of the Inns of Court. Thus Clifford's Inn, Clement's Inn and Lyon's Inn were attached to the Inner Temple; Staple's Inn and Barnard's Inn to Gray's Inn; the New Inn and Strand Inn to the Middle Temple, and Furnival's Inn and Thavia's Inn to Lincoln's Inn.

THOMAS LEAMING, A PHILADELPHIA LAWYER IN THE LONDON COURTS.

[21] Solicitors do not receive their training in, nor are they members of, the Inns of Court. Any person desiring to become a Solicitor must, by written contract, be "articled" as a clerk to a practicing Solicitor for five years, unless he be a graduate of an English university in which case he need serve as a clerk for only three years. The qualifications, duties and privileges of Solicitors are regulated by the Solicitors' Incorporated Law Society.

ROBBINS, AMERICAN ADVOCACY, p. 7.

> the king's court. We see the attorney (who answers to the ecclesiastical proctor) and the 'pleader', 'narrator' or 'counter' (who answers to the ecclesiastical advocate).
>
> "* * * Under Edward I a process, the details of which are still very obscure, was initiated by the king, which brought the professional attorneys under the control of the judges and began to secure a monopoly of practice to those who had been formally ordained to the ministry of the law. About the same time it is that we begin to read of men climbing from the Bar to the Bench, and about the same time it is that the judges are ceasing to be ecclesiastics." [22]

It seems clear, therefore, that as early as the reign of Edward I, a legal profession, composed of temporal lawyers, had come into existence, and that it consisted of two branches known respectively as pleaders and attorneys.

It would seem to be a proper inference, from what has been said above, that the modern barrister occupies a position analogous to that of the former ecclesiastical "advocate", and the solicitor to that of "procurator" or "proctor". It may be reasonably inferred, also, that the barristers are the successors of the former "pleaders", "narrators" or "counters", and the solicitors the successors of the former "attorneys".

It should be noted, in this connection, that the earliest regularly licensed advocates in England were known as sergeants-at-law. This class has, however, been superseded by the King's Counsel, whose duties and privileges are of a similar nature, and the term sergeant has now become extinct.[23]

---

[22] MAITLAND AND MONTAGUE, SKETCH OF ENGLISH LEGAL HISTORY, pp. 93-96; BLACKSTONE'S COMMENTARIES, Book III, p. 25.

[23] Sergeant-at-law was formerly the highest rank to which an English advocate could attain. "The elevation, then, to the dignity of a sergeant was the great step forward in the profession. It made the lawyer a member of the great gild which administered the law; and it placed him almost on an equality with the bench. The sergeants and the judges were brothers of the Order of the Coif. To the end they addressed each other as such and lodged together at the Sergeant's Inn. We are not surprised to find that the creation of a judge was, compared with the creation of a sergeant, an informal affair."

HOLLINGSWORTH, HISTORY OF ENGLISH LAW, Vol. II, p. 413.

The origin of the Order of the Coif, referred to above, is not definitely known. The generally accepted theory is that, after the clergy were prohibited from practicing in the secular courts, those of them "who had adopted the law as a profession and were unwilling to be deprived of

> "The first persons regularly licensed to appear as advocates in the king's courts were called 'sergeants', although their full official title seems to have been *Servientes Domini Regis ad legem;* that is, *Servants at law of our lord, the King.* Unlike all prior advocates they were part of the court itself; were regularly appointed by royal patent; were admitted only upon taking an oath; had a monopoly of all practice, and were directly amenable to the king as parts of his judicial system. The fundamental ideas involved in the creation of this class have never been abandoned, and, notwithstanding that the class itself by the name 'sergeants' had ceased to exist, they are still the distinguishing characteristics of the bar of all countries where the common law prevails." [24]

It is beyond the scope of this paper to go into a full and detailed discussion of the respective functions of barristers and the solicitors—the present divisions of the legal profession in England. Suffice it to say, the distinction is not recognized in this country, the term attorney-at-law covering the entire field of professional advocacy. "Indeed it may be accurately stated," says Mr. Robbins, "that the American lawyer is rather the English solicitor possessing, however, the professional rights and duties of the English barrister." [25]

---

this means of livelihood, assumed a coiffure, or close fitting head-dress to hide the clerical tonsure, and this became the distinguishing badge of the legal profession for many years thereafter. To this circumstance is also ascribed that peculiar feature of the modern barrister—the wig."

WARVELLE, ESSAYS IN LEGAL ETHICS, p. 28; FENDERWICK, THE KING'S PEACE, p. 91.

It has been said, however, that the coif "had been in use ages before * * * the rules and constitutions prohibiting the clergy from acting as advocates", * * * and that "the old coif of the sergeants-at-law was in fact an honorable and distinctive head-dress corresponding to the helmet of knighthood".

PULLING, ORDER OF THE COIF, pp. 21-24.

Sergeant's Inn, above referred to, seems to have originated during the latter part of the fourteenth or early in the fifteenth century. The "first abode of the sergeants" is said to have been Scrope's Inn in Fleet Street, but it appears that, about 1758, they gave up their Inn in Fleet Street, and "united with their brethren in Chancery Lane". With the disappearance of sergeants, however, their Inn likewise became extinct.

See note, COSTIGAN, CASES ON LEGAL ETHICS, p. 6.

[24] WARVELLE, ESSAYS IN LEGAL ETHICS, p. 29.

[25] For distinction between barristers and solicitors, and their respective

It would hardly be fitting to close this article without a reference, at least, to the legal profession in our own country. Looking first to the Colonial period, we find that the growth of the profession was, during that period, remarkably slow. In fact, it was not until the era of the Revolution that a real bar began to form itself. There were several causes for this.[26]

In the first place, there were originally no independent courts in any of the Colonies. The Legislatures first, and later the Governors and their Deputies or Assistants, constituted the courts. Even after independent courts had been established, near the middle of the seventeenth century, they were composed in the main of laymen, and were subject, in a large measure, to the control of the Royal Governors. In such a condition of things anything like a real profession of law was a thing impossible.

A second hindrance to the growth of the profession was that the so-called "attorneys" of the time were looked upon with suspicion and held in general ill repute. So widespread was the prejudice against them that in some of the Colonies they were prohibited from charging or receiving fees, while in others all paid attorneys were excluded from the courts entirely. In all of the Colonies severe restrictions were imposed. It should be stated, however, in justice to the profession of the present time, that the so-called "attorneys" of the early Colonial days were not lawyers at all, but "were very largely traders, factors, land speculators and laymen of clever penmanship and easy volubility, whom parties employed to appear and talk for them in the courts",[27] and doubtless merited the low esteem in which they were held.

A third factor that entered largely into the situation was the unsettled state of the law itself. Whether or not the English Common Law was to be accepted as the law of the land was, for

---

functions, see ROBBINS, AMERICAN ADVOCACY, chapter 1. See also a highly entertaining address, entitled "Our Brethren Overseas", by Hon. John W. Davis, former Ambassador to Great Britain, delivered before the American Bar Association, at Cincinnati, Ohio, August 31, 1921.

[26] For a full account of the growth of the profession during the Colonial period, see Introduction, WARREN, HISTORY OF THE AMERICAN BAR.

[27] WARREN, HISTORY OF THE AMERICAN BAR, p. 5.

a considerable period of time, an open question. In some of the Colonies it was adopted at a comparatively early date, while in others it was stoutly maintained that each Colony had the right to adopt such laws and usages as it saw fit and as best suited its needs. It was not until the eighteenth century was well advanced that the Common Law became generally accepted as the basis of the Colonial law.

A fourth circumstance that tended to retard the growth of the profession was that "law as a science was in so rigid a condition that it failed to touch the popular life. The Common Law was still feudal and tyrannical. The people felt the restrictions it enforced, and knew little of the liberties it guaranteed." [28] The law was in a large degree removed from the general masses of the people, and the result was a natural prejudice against both law and lawyers.

In the fifth place, the religious sects in many of the Colonies were intolerant of, and hostile in their attitude toward, lawyers. Litigation of any kind was opposed by the Quakers in Pennsylvania. In New England, especially, the clergy constituted the most influential class in the community, and, by virtue of their superior knowledge of both law and letters, almost completely controlled the courts. "It was to their clergymen that the Colonists looked to guide their new governments, and in their clergymen, they believed, lay all that was necessary and proper for their lawful and righteous government. It followed, therefore, that the 'Word of God' played a greater part in the practice of the law than the words of Bracton, Littleton or Coke. Where such was the condition, there was more need of clever clergymen than of trained lawyers." [29]

In the last place, the scarcity of law books and the lack of facilities for the study of law, together with the ignorance of the judges in most of the Colonies, rendered impracticable, not to say impossible, the development of an intelligent, trained and efficient bar.

Such was the situation at the close of the seventeenth century. With the ushering of the eighteenth century, however, changes

[28] WARREN, HISTORY OF THE AMERICAN BAR, p. 5.
[29] WARREN, HISTORY OF THE AMERICAN BAR, p. 7.

favorable to the growth of a real profession of law began to occur. The American Colonies had become a reality and were no longer an experiment. The Colonies were growing in wealth and properity. Institutions of learning were founded, and means of education provided. The *Boston News Letter,* the first Colonial newspaper, was published in 1704. In 1753 a penny post was established by Benjamin Franklin, who was at that time filling the office of "Deputy Postmaster General for the Colonies", which office, with headquarters in New York, had been created by Act of Parliament in 1704. Commerce was being extended and business transactions that required the services of real lawyers were multiplying rapidly. The Royal Governors, the King and Parliament were encroaching more and more upon what the Colonists were beginning to recognize and to assert as their rights under the English Common Law. Various new questions were arising in the courts which necessitated a resort to the Common Law for precedents upon which to base decisions. The necessity for trained and skilled lawyers had arisen.

About this time barristers from England began to come into the Colonies, and men of education and culture in the Colonies began to enter the law as a profession. Sharp practitioners and persons of low merit were excluded from the practice, through the agency of bar associations, and thus the profession rose to a position of dignity and importance in every community. Another very potent influence in elevating its standard, and in developing an able bar, was the fortunate growth of a class of Colonial lawyers who went to England and obtained their legal training in those venerable institutions—the Inns of Court. It is estimated that, from 1750 to 1775, nearly a hundred and fifty Colonial lawyers were students in the Inner and Middle Temples in London.

> "* * * In fact it may be said without exaggeration that the American lawyer of the late Eighteenth Century was the product either of the English Inns of Court or of the American colleges—Harvard, Yale, Princeton, Brown and the College of William and Mary. And it was this superior training which fitted the lawyer of the Eighteenth Century to become the spokesman, the writer and the orator of

> the people when the people were forced to look for champions against the pretensions of the Royal Governors and judges and of the British Parliament. So that when the War of the Revolution broke out, the lawyer, from being an object of contempt to restrain whom restrictive legislation was yearly necessary during the Seventeenth Century, had become the leading man in every town in the country, taking rank with the parish clergyman and the family doctor." [30]

It should be stated here that during the period immediately following the Revolution a somewhat strange situation arose. The ancient aversion for lawyers or "attorneys" was revived with surprising suddenness. The services of the lawyers during the era of the Revolution appear to have been forgotten, and again they became objects of suspicion and distrust. While there were several contributing causes, this sudden revulsion of feeling was probably due in the main to a not unnatural prejudice against the Common Law and all things British. Fortunately, however, this antipathy, after the lapse of a few years, passed away, and was gradually lost in the recognition by the people of the real value of the courts, and in the further recognition of the necessity for a profession, composed of members of character, training and talent, who, as officers of the Court, are essential in the administration of justice.

It may be said, by way of general observation, that the part that the American Bar has had in making this great country of ours justifies the statement that it has not departed from the traditional high standard of the profession. The American lawyer has had peculiar opportunities for service. When it became necessary to frame a constitution, sufficiently strong to bind together into one government thirteen independent and sovereign States, yet sufficiently elastic to preserve the essential rights of those States, this difficult task necessarily devolved largely upon the legal profession. And well was this difficult task performed. Mr. Gladstone characterizes our Constitution as "the most wonderful work ever struck off at a given time by the brain and purpose of man", and Mr. Bryce, perhaps the greatest modern authority on constitutional questions, refers to our government as

[30] WARREN, HISTORY OF THE AMERICAN BAR, p. 18.

"the first true federal state founded on a complete and scientific basis". Not only was the actual framing of the Constitution largely the work of the master minds of the legal profession of that period, but it was largely through the profession's influence that the adoption of the Constitution was secured. As was said by Hon. William L. Marbury, in an address before the Maryland Bar Association in 1911, "but for the persuasive logic, the powerful reasoning of the great lawyers of the *Federalist,* it might well be doubted whether the Constitution of 1787 would ever have become the law of the land".

Lack of space forbids an attempt to trace, even in outline, the influence of the legal profession in directing the policies, both internal and foreign, of our government. Of the twenty-eight Presidents of the United States, twenty-one have been lawyers; twenty-five of the fifty-six Signers of the Declaration of Independence were lawyers; and of the fifty-five delegates in the Federal Constitutional Convention of 1787, thirty-one were lawyers, four of whom had been students in the Inner Temple in London, and one of whom had studied under Blackstone at Oxford.[31] In the halls of Congress, in the legislatures of the States, on the Bench, and in the life of the community the influence of the profession has been felt and recognized. The names of Thomas Jefferson, Patrick Henry, Alexander Hamilton, James Madison, John Marshall, Andrew Jackson, Calhoun, Clay, Webster, Kent, Story, and a host of others too numerous to mention are indelibly impressed upon the minds of the American people. Again, in speaking of the early American lawyer, Mr. Marbury says:

> "The people of his neighborhood, of his county, or of his State, and as his fame increased people of the whole country, looked to him for guidance and advice in their public affairs, as well as in matters more strictly pertaining to his profession. While he was at the bar he was a leader of public opinion, and when he was transferred to the bench, his judgment received universal obedience as the settled law of the land."

---

[31] WARREN, HISTORY OF THE AMERICAN BAR, p. 211. See also, J. H. BENTON, JR., INFLUENCE OF THE BAR IN OUR STATE AND FEDERAL GOVERNMENT, (1894).

De Tocqueville, the "kindest yet shrewdest critic of American democracy", pays this high tribute to the American Bar: "The people," he said, "in democratic states do not mistrust the members of the legal profession, because it is well known that they are interested in serving the popular cause; and it listens to them without irritation because it does not attribute to them any sinister designs." Referring again to this subject, he says: "I am not unacquainted with the defects which are inherent in the character of that body of men, but without this admixture of lawyer-like sobriety with the democratic principle, I question whether democratic institutions could long be maintained, and I cannot believe that a republic could subsist at the present time if the influence of lawyers in public business did not increase in proportion to the power of the people." [32]

In conclusion, what of the lawyer of to-day? This is a question that each individual member of the profession should ask himself and ask himself earnestly and often. We of the present generation of lawyers have a priceless heritage, and at the same time there rests upon us a grave responsibility. Our heritage is the record of an ancient and honorable profession; to uphold that record is our responsibility.

E. W. Timberlake, Jr.

WAKE FOREST COLLEGE.

[32] DEMOCRACY IN AMERICA, Vol. I, pp. 297-298.